HIGH COURT OF UTTARANCHLA AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

(Description of the case.

WPMS No. 5846/2001

Nagar Palika, Hardwar

Vs

Chief. Judicial Magistrate

Saharanpur & others

Approved for reporting.

Not approved for reporting

Date of decision 18.7.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 5846 of 2001 (MS)
(Old No. 21250/86)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5847 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 6090 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5841 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5842 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5843 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5848 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5849 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5851 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5854 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5844 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Writ Petition No. 5850 of 2001 (MS)

Nagar Palika, Hardwar ..... Petitioner

Versus

1. Chief Judicial Magistrate, Saharanpur
2. Mahanirvani Akhara, Kankhal through its Manager, Secretary Mahant Girdhar Narain Puri.... Respondents

Sri Pankaj Miglani, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 18.7.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petitions, the petitioner has prayed for a writ of certiorari quashing the order dated 30.7.1986 passed by the Chief Judicial Magistrate, Saharanpur.

Briefly stated respondent no. 2 is the owner of the properties in question situated within the municipal limits of Nagar Palika, Haridwar. The petitioner prepared an assessment list relating to the properties of the respondent no. 2 giving the names of the Mohalla, description of the properties, their annual value and amount of tax assessed. The petitioner issued notices under sub section (1) section 141 and sub section (1) section 143 of U.P. Municipalities, Act, 1916 to respondent no. 2 imposition of House Tax and water tax which were served upon the respondent no. 2. Respondent no. 2 has filed objection to the aforesaid notices on the ground that the property owned by respondent no. 2 is exempted from all taxes and as such the Municipal Board is not entitled to impose any tax as the entire income of the property is spent for the religious and charitable purposes. According to the petitioner in the year 1983 the Municipal Board, Hardwar was superseded and the District

Magistrate was appointed as Administrator who managed all the affairs of the Board. On 4th May 1983 the Commissioner, Meerut Division, Meerut appointed the Officer Incharge Nagar Palika, Hardwar as Officer (Saksham Adhikari) under Section 143 (3) of U.P. Municipalities Act, for deciding the objections filed under section 143 (2) of U.P. Municipalities Act relating to the house and water tax. On 1.7.1983 the Competent Officer allowed the objection of respondent no. 2. Feeling aggrieved by that order the Municipal Board has filed an appeal under section 160 of the U.P. Municipalities Act, before the Chief Judicial Magistrate, Saharanpur, which was partly allowed vide order dated 29.11.1983 and the order dated 1.7.1983 was set aside and the property in question was valued for the purpose of house and water tax.

Respondent no. 2 filed a review petition on 21.7.1984 under section 164 (2) of U.P. Municipalities Act, which was allowed by respondent no. 1 and has set aside his earlier order dated 29.11.1983, against which the present writ petition has been filed.

The review petition was allowed on the ground that Nagar Palika has no right to prefer the appeal and the appeal can only be filed by the person upon whom the tax was imposed. The view taken by the appellate Court in review petition cannot be allowed to sustain. Section 160 of the Municipalities Act provides as under:

160. ***Appeal relating to taxation-*** *(1) In the case of a tax assessed upon the annual value of buildings or lands or both an appeal against an order passed under sub section (3) of section 143 or under sub section (3) of section 147, and in the case of any other tax, an appeal against an assessment, or any*

alteration of an assessment, may be made the District Magistrate or to such other officer as may be empowered by the State Government in this behalf.

The petitioner having aggrieved by the assessment of house tax and water tax made by the Competent Officer has every right to file the appeal before the appellate authority.

In view of above, impugned order dated 30th July 1986 is set aside. The matter is sent back to the appellate authority to decide it afresh in accordance with law.

Accordingly, writ petitions are allowed. No order as to costs.

Dated: 18.7.2006 **Rajesh Tandon, J.**

*Dhyani